18-5410

No. _____

ORIGINAL

In the
Supreme Court of the United States

N. Charles Podaras,

Petitioner,

v.

City of Menlo Park, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Petitioner in pro per

QUESTIONS PRESENTED

The Federal Rules of Appellate Procedure provide that a party to a district-court action who was permitted to proceed *in forma pauperis* in the district-court action may proceed on appeal *in forma pauperis* without further authorization, unless (A) the district court – before or after the notice of appeal is filed – certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed *in forma pauperis* and states in writing its reasons for the certification or finding; or (B) a statute provides otherwise. See Fed. R. App. P. 24(a)(3).

Petitioner N. Charles Podaras was permitted to proceed *in forma pauperis* for the duration of the district-court action preceding his appeal in the United States Court of Appeals for the Ninth Circuit.

After Petitioner's notice of appeal was filed; the district court, in an order revoking Petitioner's *in forma pauperis* status, certified that the appeal was not taken in good faith. Neither accompanying the certification nor independently, did the district court provide an apprisal of the reasons for its certification. As well, neither in its order nor in any other order, judgement, or issued document did the district court present an apprisal that Petitioner was not otherwise entitled to proceed *in forma pauperis*.

Petitioner was not permitted to proceed on appeal *in forma pauperis* without further authorization.

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The Ninth Circuit provides a unique informal form brief available for use by parties proceeding on appeal without the assistance of counsel. The document is structured in a question-and-answer format.

The questions presented are:

1/ Whether the Ninth Circuit – acting in contravention of Federal Rules of Appellate Procedure; and splitting with holdings of multiple courts of appeals, including the Fifth and Seventh Circuits – erred in not permitting Petitioner/Appellant to proceed on appeal *in forma pauperis* without further authorization.

2/ Whether the Ninth Circuit – acting in contravention of requirements dictated by Federal Rules of Appellate Procedure; and splitting with holdings of multiple courts of appeals, including the Fifth and Seventh Circuits – erred in not requiring the district court to provide a statement of reasons for certifying that Petitioner/Appellant's appeal was not taken in good faith.

3/ Whether a court of appeals may treat differently the appeal of a party utilizing that court's informal form brief which is provided for use by parties proceeding on appeal without the assistance of counsel; by failing to examine facts in the record cited to from within the structure of the informal form brief.

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Petitioner (plaintiff and appellant below):

N. Charles Podaras

Respondents (defendants and appellees below):

City of Menlo Park;

Officer Claudio Ruiz (in individual and official capacities);

Technical Services Manager Susie Eldred (in individual and official capacities);

Officer Burke Bruttig (in individual and official capacities);

Property Officer Nancy M. Gable (in individual and official capacities);

Records Officer Deborah N. Calvillo (in individual and official capacities);

Revenue and Claims Management Coordinator John McGirr (in individual and official capacities);

The Superior Court of California, County of San Mateo;

Court Executive Officer/Clerk John C. Fitton) (in individual and official capacities);

Legal Exhibit Technician Jorge Melendrez (in individual and official capacities);

Court Services Manager Janice Antonini (in individual and official capacities);

County of San Mateo;

San Mateo County District Attorney Office;

District Attorney James P. Fox (in individual and official capacities);

District Attorney Steve Wagstaffe (in individual and official capacities);

Deputy District Attorney Brian Donnellan (in individual and official capacities);

Deputy District Attorney Morris Maya (in individual and official capacities);

Deputy District Attorney Brian Raft (in individual and official capacities);

Judicial Council of California;

State Bar of California;

Las Lomitas School District;

Dennis Hatfield;

Linda Bleich;

Janet Davis;

and DOES 1-75, inclusive.

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PETITION FOR WRIT OF CERTIORARI

The questions presented in this case are rooted in a circuit split and lack of conformity to Federal Rules of Appellate Procedure, concerning implementation of denial of rights of indigent parties to proceed on appeal *in forma pauperis* without further authorization; and in a further matter of fundamental fairness impacting *pro se* appellants using an informal form brief provided by a court of appeals.

This case is an ideal vehicle for resolving multiple questions of national importance concerning access to the courts which are likely to reoccur, as they relate to two large populations seeking relief in the United States District Courts and Courts of Appeals: *pro se* parties, who according to United States Courts Judicial Business Reports are a group which in each of the past three years represents 50% or more of the total cases commenced in the Courts of Appeals[1]; and the significant number of parties desiring to proceed *in forma pauperis* in the District Courts and Courts of Appeals. Petitioner, a wrongful conviction exoneree, is similarly situated: for the duration of his district court 42 U.S.C § 1983 civil rights action, subsequent appeal, and preparation of this petition, he has been continuously homeless, indigent, and unable to afford legal representation.

A. Circuit split and lack of conformity to Fed. R. App. P. 24 Proceeding in Forma Pauperis

Different circuits are variously following or not conforming to Federal Rules of Appellate Procedure prescribed by and adopted by order of this Court. At issue is the provision of Fed. R. App. P. 24 Proceeding in Forma Pauperis, allowing that a party to a

1 See
http://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2017 : 50%
http://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2016 : 52%
http://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2015 : 51%

district-court action who was permitted to proceed *in forma pauperis* in the district-court action may proceed on appeal *in forma pauperis* without further authorization, unless certain criteria are met. One such criterion which would preclude the party from proceeding on appeal *in forma pauperis* without further authorization is if the district court – before or after the notice of appeal is filed – certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed *in forma pauperis*; the district court is however required to state in writing its reasons for the certification or finding. See Fed. R. App. P. 24(a)(3).

Both the Fifth and Seventh Circuits have specifically held that a district court entering certification that an appeal is not taken in good faith must provide reasons for the conclusion.[2] However in the case of Petitioner, who was permitted to proceed *in forma pauperis* for the duration of his action in the District Court for the Northern District of California, the district court failed to provide any such reasons supporting its eventual certification that the appeal is not taken in good faith, and also presented no other apprisal that Petitioner was not otherwise entitled to proceed *in forma pauperis.*

Petitioner subsequently was informed by the Ninth Circuit Clerk's Office that due to the district court issuance of certification that his appeal was not taken in good faith, he was precluded from proceeding on appeal *in forma pauperis* without further authorization. Petitioner filed a Ninth Circuit motion requesting permission to proceed

2 See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997) (district court required to provide reasons for certifying that appeal was not taken in good faith) and (from the Fed. R. App. P. 24 Notes of Advisory Committee on Rules – 1967) *United States ex rel. Breedlove v. Dowd*, 269 F.2d 693 (7th Cir., 1959) (when a certificate is entered that an appeal is not taken in good faith, such certificate shall be accompanied by a statement of the reasons for such conclusion).

on appeal *in forma pauperis*; thereby challenging the district court certification on grounds that the district court failed to provide written reasons for its certification.

In their ruling denying Petitioner's request, the Ninth Circuit panel – beyond failing to acknowledge the issue of the district court's missing certification reasons – however neither required the district court to provide the compulsory reasoning nor permitted Petitioner to proceed on appeal *in forma pauperis*. The appellate court instead required that Petitioner pay docketing and filing fees and respond to an order to show cause, should he desire to proceed on appeal.

Petitioner's fate follows in significant part from him being located in California rather than, i.e., Texas or Illinois; such inconsistency is manifestly unfair. It points to a lack of uniformity across the circuits, requiring this Court's prompt review and guidance.

B. Different treatment of an appellant utilizing an appellate court's informal form brief

Petitioner as well experienced that by utilizing a Ninth Circuit informal form brief, he apparently was treated differently than had he prepared his appellate opening brief in formal fashion. On its face, content of the Ninth Circuit's eventual 2017 order which affirmed the district court 2015 judgement (and which also denied Petitioner's 2016 motion for appointment of counsel) demonstrates that the appellate court failed to examine facts in the record to which petitioner had cited from within the informal form brief's question-and-answer structure.

These cited facts were necessary for an accurate Ninth Circuit review of the *extensive* instances of factual error – including even numerous complete inversions of true facts – present in the district court order's fact statement and analysis. Further, the

cited facts were necessary for an accurate Ninth Circuit review of district court conclusions resulting from late-stage misrepresentations by multiple opposing parties, to which Petitioner had had no procedural opportunity to respond before the district court issued its ruling granting defendants' 12(b)(6) motions to dismiss.

The district court errors – including in multiple instances errors caused by episodes of document conflation committed by the district court – had resulted in the district court removing the true-fact bases for several of Petitioner's key claims in his 42 U.S.C § 1983 district court action. In order to assist the district court in correcting erroneous aspects of its fact statement and analysis, Petitioner subsequently presented a motion to alter or amend the judgement; referencing the true facts from, inter alia, his district court 42 U.S.C § 1983 complaint. The district court however failed to correct or even acknowledge errors, actually repeating errors in its order denying Petitioner's motion. In addition, that district court order on its face presented a chronology which stopped short of Petitioner's documents timely-filed in Reply to five defendant documents opposing Petitioner's motion to alter or amend the district court judgement.

It was therefore imperative for the Ninth Circuit to consider true facts in the record to which Petitioner had cited from within his opening brief, which utilized the Ninth Circuit's informal brief format. Instead, the Ninth Circuit performed its analysis using not only an incomplete set of facts, but also including false facts; panel findings are misleading, and in multiple instances unsupported by facts and the record.

This situation appears to be direct consequence of Petitioner relying upon the Ninth Circuit's format of informal form brief provided for use of *pro se* parties. Again

considering statistics from United States Courts Judicial Business Reports[3], a large population is potentially impacted if the issue goes unresolved: the Ninth Circuit itself leads in percentage of all cases commenced in the United States Courts of Appeals; for the past three years roughly 50% of Ninth Circuit cases commenced have been *pro se* at filing (ranging from 4941 to 5855 *pro se* filings per year)[4]. It cannot be discounted that a similar informal form brief issue may exist in other circuits. The different treatment accorded Petitioner indicates a need for this Court's prompt review and guidance.

OPINIONS BELOW

The opinions, orders, and memorandum dispositions of the United States District Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit (App. A-P) are unreported.

JURISDICTION

The United States Court of Appeals decided Petitioner's case on 2017 October 03. A timely petition for rehearing was denied by the United States Court of Appeals on 2018 February 01; a copy of the order denying rehearing appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C § 1254(1).

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3 See
http://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2017
http://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2016
http://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2015

4 *See* Tables of Pro Se Cases Filed and Terminated, by Nature of Proceeding:
http://www.uscourts.gov/statistics/table/b-9/judicial-business/2017/09/30 : 2017, 4941 *pro se* filings
http://www.uscourts.gov/statistics/table/b-9/judicial-business/2016/09/30 : 2016, 5560 *pro se* filings
http://www.uscourts.gov/statistics/table/b-9/judicial-business/2015/09/30 : 2015, 5855 *pro se* filings

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1915 Proceedings in forma pauperis is reproduced at App-17. Fed. R. App. P. 24 Proceeding in forma pauperis is reproduced at App-18. Fed. R. App. P. 36 Entry of Judgement; Notice is reproduced at App-19. Fed. R. App. P. (version 2015 Dec. 01: excerpt, pp. I-X, including sections Authority for Promulgation of Rules and Historical Note) is reproduced at App-20. Fed. R. Civ. P. 59 New Trial; Altering or Amending a Judgment is reproduced at App-21. Fed. R. Civ. P. 60 Relief from a Judgment or Order is reproduced at App-22.

STATEMENT OF THE CASE

Petitioner N. Charles Podaras seeks review of the Ninth Circuit's 2017 Oct. 03 decision which both affirmed the District Court's dismissal of his 42 U.S.C. § 1983 civil rights action and denied his motion for appointment of counsel; the Ninth Circuit's 2015 Sep. 06 order denying his motion for permission to proceed on appeal *in forma pauperis*; and the Ninth Circuit's 2018 Feb. 01 order denying rehearing and rehearing *en banc*.

A. Facts and Procedural History

On 2014 July 11 in the United States District Court for the Northern District of California, Petitioner commenced a 42 U.S.C. § 1983 action (Complaint, *N. Charles Podaras v. City of Menlo Park, et al.*, No. CV 14-3152 SI (N.D. Cal 2014), Dkt. 1) asserting federal and state law claims and – as expanded upon in his subsequent First Amended Complaint (First Amended Complaint, *N. Charles Podaras v. City of Menlo Park, et al.*, No. CV 14-3152 SI (N.D. Cal 2014), Dkt. 17) – seeking relief for a pattern of actions of government misconduct to which he had been subjected. The First Amended Complaint utilized then-recent acts and events from the period 2012-2014 (multiple of which were

performed by same Defendant(s) involved in a related, 2009, 42 U.S.C. § 1983 action (see *infra.*)) as foundation for newly-alleged courses of conduct by Defendant(s). The case involves a complex set of facts not amenable to easy analysis.

Previously, in 2009, there had commenced a related 42 U.S.C. § 1983 action resulting from Petitioner's 2005 wrongful conviction. Petitioner was represented by professional counsel. That 2009 civil rights action led to a 2011 August 30 petition for writ of certiorari to this Court. See *Charles Podaras, Petitioner v. City of Menlo Park, California, et al.*, No. 11-261 (2011), *cert. denied.*

The 2011 certiorari petition brought to the Court's attention – as an illustrative example of problematic issues arising from suppression of evidence, such as had been experienced by Petitioner – the as-then-only-weeks-old 2011 July 28 Ninth Circuit ruling in *Estate of Amaro v. City of Oakland*, 653 F. 3d 808 (9th Cir. 2011), a case which had been proceeding essentially concurrently with Petitioner's Ninth Circuit case. In *Amaro*, the Ninth Circuit held that based on actions of government actors involving suppression of evidence, withholding of a police report, which had prejudicially delayed the plaintiff's ability to bring a 42 U.S.C. § 1983 claim, the doctrine of equitable estoppel applied to toll the statute of limitations.

Petitioner filed the 2011 certiorari petition in this Court on 2011 August 31. That 2011 certiorari petition asked the Court to determine what state statutes of limitations should govern 42 U.S.C. § 1983 civil rights lawsuits predicated on independent constitutional violations. The 2011 certiorari petition also importantly indicated that, as in *Amaro*, Petitioner's ability to bring a 42 U.S.C. § 1983 claim had been prejudicially delayed by withholding key evidence of wrongdoing, a police report, by Respondents:

evidence that the governmental defendants had tampered with a police report was not obtained until years after Petitioner's false conviction was overturned. *Charles Podaras, Petitioner v. City of Menlo Park, California, et al.*, No. 11-261 (2011), *cert. denied.* pp 1–28, see esp. pp. 26–28.

On 2015 April 30, the First Amended Complaint of Petitioner's 2014 42 U.S.C. § 1983 action was dismissed by the district court in an order granting Defendants' motions to dismiss. App-2, Order of the United States District Court for the Northern District of California Granting Defendants' Motions to Dismiss Without Leave to Amend, *N. Charles Podaras v. City of Menlo Park; et al.*, No. CV 14-3152 SI, (2015 Apr. 30). That order contained extensive factual error in its fact statement and analysis, including numerous complete inversions of true facts and multiple instances of errors resulting from district court conflation of documents; performed analysis which relied upon on late-stage misrepresentations by opposing parties to which Petitioner had had no opportunity to respond before the district court issued the order; and imputed to Petitioner allegations he did not make. *Infra.* II. A., pp. 24–26. *Infra.* III., pp. 27–29.

District court factual error also served to corrupt and remove the correct chronology of true facts which supported the application of the Ninth Circuit's on-point *Amaro* teaching regarding equitable tolling, which Petitioner had brought to the court's attention on multiple occasions including inter alia in his First Amended Complaint. The district court subsequently failed to correct its errors when alerted to their existence. Those uncorrected errors then propagated forward, from the district court opinion's fact statement and analysis, into Petitioner's Ninth Circuit appeal. There, the errors remained uncorrected: the appellate panel did not acknowledge information presenting

correction, or correct the errors, and even continued to reiterate district court errors. *Infra.* III., pp. 27–29. The timeline and sequence of events concerning: the 2009 related 42 U.S.C. § 1983 action; the 2011 Ninth Circuit holding in *Amaro*; Petitioner's subsequent 2011 petition to this Court; Petitioner's 2014 Complaint and First Amended Complaint; and the 2015 district court order granting Defendants' motions to dismiss; are critically important for understanding background of the current case. See i.e. Appellant's Reply Brief, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2017 August 21), pp. 2–4. See especially App-8, Appellant's Response to Order to Show Cause, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Nov. 18), pp. 12–16.

Pursuant to Fed. R. Civ. P. 59(e) (A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment); and Fed. R. Civ. P. 60(b) (On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:) subsections 60(b)(3) (fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;) and 60(b)(6) (any other reason that justifies relief.); Petitioner timely filed a motion to amend or alter the judgement, providing information as to the errors, and true facts, in order to assist the district court in correcting its fact statement and analysis. App-14, Plaintiff's Notice of Motion and Motion to Alter or Amend the Judgement and/or for Relief from Judgement; Declaration of Plaintiff; and [Proposed] Order, *N. Charles Podaras v. City of Menlo Park; et al.*, No. CV 14-3152 SI, (2015 May 28). Five opposing parties filed Responses; Petitioner timely filed five Replies which were docketed. App-15, Plaintiff's Replies to Defendants' Five Oppositions to Plaintiff's Motion to Alter or Amend the Judgement and/or for Relief from Judgement, *N. Charles Podaras*

v. City of Menlo Park; et al., No. CV 14-3152 SI, (2015 Jun. 18). Merely hours after the Replies were filed late at night, the district court issued a ruling denying Petitioner's motion to amend or alter the judgement (App-16, Order of the United States District Court for the Northern District of California Denying Plaintiff's Motion to Alter Judgement, *N. Charles Podaras v. City of Menlo Park; et al.*, No. CV 14-3152 SI, (2015 Jun. 19)); that ruling not only failed to acknowledge the content or even existence of Petitioner's Reply papers, but as well presented a chronology of the case which on its face concluded *before* the filing of the Reply papers.

Petitioner timely noticed his appeal. Immediately thereafter, the district court issued an order (App-5, Order of the United States District Court for the Northern District of California Revoking Plaintiff's In Forma Pauperis Status, *N. Charles Podaras v. City of Menlo Park; et al.*, No. CV 14-3152 SI, (2015 Jul. 20)) certifying that the appeal was not taken in good faith, thereby blocking Petitioner's Fed. R. App. P. 24(a)(3) right to proceed on appeal *in forma pauperis* without further authorization. The district court however did not provide written reasoning supporting the certification, and hence did not comport with requirements of Fed. R. App. P. 24(a)(3)(A), which require a district court certification that an appeal is not taken in good faith to be supported by written reasons for the certification.

Petitioner timely filed a motion requesting permission to proceed on appeal *in forma pauperis* (App-6, Appellant's Motion for Permission to Appeal in forma pauperis, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Aug. 19)), addressing inter alia the district court's failure to follow Fed. R. App. P. 24(a)(3)(A). The appellate court issued an order (App-7, Order of the United States Court of Appeals for the Ninth

Circuit Denying Appellant's Motion to Proceed in forma pauperis, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Sep. 16)) denying the motion to proceed *in forma pauperis*, but including therein an order to show cause should Petitioner wish to proceed with the appeal. Petitioner filed his response. App-8, Appellant's Response to Order to Show Cause, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Nov. 18). After reviewing the facts and reasoning included in the response, the Ninth Circuit discharged the order to show cause and set the schedule for briefing. App-9, Order of the United States Court of Appeals for the Ninth Circuit Discharging Order to Show Cause and Setting Briefing Schedule, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2016 Jan. 05). In that ruling and subsequently, the Ninth Circuit has not labelled the appeal as frivolous. Petitioner timely filed his opening brief. Due to good cause, he subsequently filed a Request for Appointment of Counsel. App-10, Appellant's Motion for Appointment of Counsel, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2016 Jun. 21). He timely filed his Reply brief.

On 2017 October 03, the appellate court issued a memorandum disposition in which it affirmed the district court's judgment dismissing Petitioner's 42 U.S.C. § 1983 action asserting federal and state law claims; and as well denied Petitioner's motion for Appointment of Counsel. App-1, Memorandum Disposition of the United States Court of Appeals for the Ninth Circuit Affirming District Court's Decision, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2017 Oct. 03). Content of the memorandum disposition on its face indicates that the appellate panel apparently failed to examine material true facts in the record referenced and/or cited to by Petitioner – facts important and necessary, in light of extensive district-court-committed factual errors, to enable the

Ninth Circuit panel to perform an accurate review of the district court 2015 April 30 order's fact statement, analysis, and conclusions. By leaving district court errors uncorrected, the panel hence performed its analysis not only using an incomplete set of facts, but also in part using false facts created by the district court itself. *Infra.* II. A., pp. 24–26. *Infra.* III., pp. 27–29. (N.B.: Fed. R. App. P. 36 Entry of Judgement; Notice indicates "...The Clerk must prepare, sign, and enter the judgement..." Although the Ninth Circuit docket shows that an entry of judgement was made (see 9th Cir. Dkt. at 80), Petitioner has received no copy of the Judgement, and none is included in the Dkt. 80 download file available from the Ninth Circuit website.) Petitioner then timely filed a joint petition for panel rehearing and for rehearing *en banc.* App-11, Appellant's Supplemented Petition for Rehearing with Suggestion for Rehearing *En Banc*, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2017 Oct. 31).

On 2018 February 01, the Ninth Circuit issued its order in which it denied the petition for panel rehearing and petition for rehearing *en banc.* App-4, Order of the United States Court of Appeals for the Ninth Circuit Denying Panel Rehearing and *En Banc* Rehearing, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2018 Feb. 01). Petitioner filed a motion to Stay Issuance of the Mandate (App-12, Appellant's Motion to Stay the Issuance of the Mandate Pending Filing of a Petition for a Writ of Certiorari with the United States Supreme Court, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2018 Feb. 08)), which was denied (App-13, Order of the United States Court of Appeals for the Ninth Circuit Denying Appellant's Motion to Stay the Issuance of the Mandate Pending Filing of a Petition for a Writ of Certiorari with the

United States Supreme Court, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2018 Feb. 13). This Petition for Writ of Certiorari timely follows.

B. Basis for Federal Jurisdiction in Court of First Instance

The United States District Court for the Northern District of California had jurisdiction pursuant to 28 U.S.C. section 1331 because the complaint presented a question of federal law, alleging violations of 42 U.S.C. section 1983. Venue was proper under 28 U.S.C. section 1391(b) in that the events and omissions giving rise to the claims asserted in Mr. Podaras's complaint occurred in the Northern District of California. Additionally, Respondents reside in or maintain places of business in the Northern District of California.

REASONS FOR GRANTING CERTIORARI

In *Coppedge v. United States*, 369 U.S. 438 (1962), this Court indicated that it was "impelled by considerations beyond the corners of 28 U.S.C. § 1915, considerations that it is our duty to assure to the greatest degree possible, within the statutory framework for appeals created by Congress, equal treatment for every litigant before the bar." *Coppedge v. United States*, 369 U.S. 446, 447 (1962). In being treated differently than would have been the situation had his appeal taken place in the Fifth or Seventh Circuits; and having his appeal treated differently due to use of a Ninth Circuit informal form brief; Petitioner has not received the equal treatment to be afforded every litigant before the bar.

I. The issue of a district court being required by Fed. R. App. P 24(a)(3)(A) to provide written reasons for a certification that an appeal is not taken in good faith, is an issue of national importance on which the Ninth Circuit's treatment

of Petitioner's case indicates a split in circuit adherence to the Rule, with significant possibility of recurrence given the number of pro se parties seeking relief in the United States Courts of Appeals.

Splitting with holdings of the Fifth and Seventh Circuits, and not conforming to requirements of Fed. R. App. P. 24(a)(3); the Ninth Circuit's denial of Petitioner's Fed. R. App. P. 24(a)(3) right to proceed on appeal *in forma pauperis* without further authorization, following from a district court order which inter alia was not supported by written reasons for the order's included certification that the appeal is not taken in good faith; and subsequent Ninth Circuit silence regarding the missing reasoning; appears to be in direct conflict with Fed. R. App. P. 24(a)(3). That rule is one which governs procedure in the United States Courts of Appeals, and hence is a rule of national application for which there is an overriding need for national uniformity in utilization. The question of whether a non-prisoner party's Fed. R. App. P. 24(a)(3) right to proceed on appeal *in forma pauperis* without further authorization may be properly denied by a district court order which did not provide written reasons for the order's included certification that the appeal is not taken in good faith; and which order presents no other finding or associated substantiation that the non-prisoner party is not otherwise entitled to proceed on appeal *in forma pauperis*; is a question of considerable national importance.

The issue, if not resolved, has significance beyond Petitioner's case, potentially affecting large numbers of persons in a significant class – indigent parties seeking relief in the United States Courts of Appeals and District Courts – and impacting fundamental legal or constitutional rights. This Court's review is warranted to address the split, lack of uniformity, and confusion amongst the circuits regarding application of Fed. R. App. P.

24(a)(3). Review is also warranted in order to resolve confusion amongst the circuits regarding an apparent conflict between 28 U.S.C. § 1915(a) and Fed. R. App. P. 24(a)(3)(A) concerning requirement for a district court to *state in writing its reasons* for its certification that the appeal is not taken in good faith or for its finding that the party is not otherwise entitled to proceed *in forma pauperis*.

Petitioner's case is not one in which "further consideration of the substantive and procedural ramifications of the problem by other courts will enable [this Court] to deal with the issue more wisely at a later date." *McCray v. New York*, 461 U.S. 961, 962 (1983) (Stevens, J., opinion respecting the denial of certiorari). The problem of indigent parties in different circuits being unfairly treated differently, will only continue and increase. The decision below is wrong and should be reversed.

A. There is a circuit split, or at minimum inconsistency and lack of uniformity in circuit adherence to Fed. R. App. P. 24(a)(3).

Federal Rules of Appellate Procedure are rules of national application for which there is an overriding need for national uniformity in implementation. It appears that the Ninth Circuit not requiring written reasoning in support of district court certification that an appeal is not taken in good faith, or failing to correct district court action providing such certification but making no statement supporting its finding of refusing to certify a good faith appeal, conflicts as well with holdings of other Circuits. The district court must provide written reasons if it certifies that an appeal is not taken in good faith. Fed. R. App. P. 24(a)(3); see also *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997) (district court required to provide reasons for certifying that appeal was not taken in good faith) and (from the Fed. R. App. P. 24 Notes of Advisory Committee on Rules – 1967)

United States ex rel. Breedlove v. Dowd, 269 F.2d 693 (7th Cir., 1959) (when a certificate is entered that an appeal is not taken in good faith, such certificate shall be accompanied by a statement of the reasons for such conclusion).

B. The order of the district court did not conform to Fed. R. App. P. 24(a)(3); and the Ninth Circuit failed to permit Petitioner to proceed on appeal *in forma pauperis* without further authorization.

The Ninth Circuit appears to have overlooked that, conflicting with existing law, Petitioner was improperly denied his Fed. R. App. P. 24(a)(3) right to proceed on appeal *in forma pauperis* without further authorization, by a district court order which did not provide written reasons for the order's included certification that the appeal is not taken in good faith, or for revocation of *in forma pauperis* status. The district court order hence did not conform to the requirement of Fed. R. App. P. 24(a)(3)(A), which requires a district court certification that the appeal is not taken in good faith to be supported by written reasons for the certification.

The denial of Petitioner's right to proceed on appeal *in forma pauperis* without further authorization by a defective district court order has prejudiced Petitioner's appeal from the beginning and caused him to suffer undue hardship, especially due to impeded ability to obtain professional representation. See App-11, Appellant's Supplemented Petition for Rehearing with Suggestion for Rehearing *En Banc, Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2017 Oct. 31), Declaration in Support of Petitioner's Petition for Rehearing p. 17 at location 3/. The district court defective order's direct effect on Petitioner obtaining effective assistance of counsel, means that it also had a direct effect on Petitioner prosecuting his appeal. Particularly in light of his homeless, indigent,

and medical circumstances; Petitioner believes that with effective assistance of counsel, he would have had a better chance in the appellate process. Further hardship resulted from requirements arising during the course of Ninth Circuit proceedings – while Petitioner was continuously indigent and homeless – of: paying docketing and filing fees; significant communication with the Clerk's Office; authoring and filing related motions, financial affidavit, letters to the appellate court, and a response to order to show cause.

1. District court silent as to stating either Petitioner's case or his appeal to be frivolous, and does not provide written reasons for certifying that the appeal was not taken in good faith; appellate court eventually permits appeal to proceed.

For the duration of Petitioner's underlying district court case, and further regarding his timely-noticed appeal, the district court was silent as to stating either the district court case or the appeal to be frivolous; as well, the district court has not provided written reasons for certifying that the appeal was not taken in good faith. See App-5, Order of the United States District Court for the Northern District of California Revoking Plaintiff's In Forma Pauperis Status, *N. Charles Podaras v. City of Menlo Park; et al.*, No. CV 14-3152 SI, (2015 Jul. 20). Petitioner was granted *in forma pauperis* status and permitted to proceed *in forma pauperis* for the duration of the underlying district court action (N.D.Cal. Dkts. 16, 48); timely noticed his appeal; then was improperly denied his Fed. R. App. P. 24(a)(3) right to proceed on appeal *in forma pauperis* without further authorization by a district court order which was silent as to finding the appeal frivolous, presented no other finding that Petitioner was not otherwise entitled to proceed in forma pauperis, and did not provide written reasons for the district court's included certification

that the appeal is not taken in good faith. See App-5, Order of the United States District Court for the Northern District of California Revoking Plaintiff's In Forma Pauperis Status, *N. Charles Podaras v. City of Menlo Park; et al.*, No. CV 14-3152 SI, (2015 Jul. 20). See App-6, Appellant's Motion for Permission to Appeal in forma pauperis, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Aug. 19).

By filing a subsequent motion in the court of appeals, Petitioner followed proper procedure for calling in question the correctness of the action of the district court. He brought the defective district court order to the attention of the Court in a motion for permission to appeal *in forma pauperis*, which also contained a required affidavit clearly evidencing his indigency. App-6, Appellant's Motion for Permission to Appeal in forma pauperis, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Aug. 19). As per Fed. R. App. P. 24(a)(5), a motion in the Court of Appeals to proceed on appeal *in forma pauperis* must include a copy of the district court's statement of reasons for its action; however, it was not possible for Petitioner to include such a copy, as the district court's reasoning in accordance with Fed. R. App. P. 24(a)(3) is not provided in a written statement.

With silence regarding the district court's defective order, the Ninth Circuit by order (App-7, Order of the United States Court of Appeals for the Ninth Circuit Denying Appellant's Motion to Proceed in forma pauperis, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Sep. 16)) denied the motion, relying upon 28 U.S.C. § 1915(a) which, as Petitioner was not a prisoner, in only relevant portion (28 U.S.C. § 1915(a)(3)) allows that an appeal may not be taken in forma pauperis if the trial court certifies in

writing that it is not taken in good faith; but which on its face as so constructed directly conflicts with the written reasoning requirement of Fed. R. App. P. 24(a)(3)(A).

(N.B.: the Ninth Circuit's order (App-7, Order of the United States Court of Appeals for the Ninth Circuit Denying Appellant's Motion to Proceed in forma pauperis, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Sep. 16)) denying Petitioner's motion to proceed on appeal in forma pauperis included:

> "The district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. We deny appellant's motion to proceed in forma pauperis because we also find the appeal is frivolous. *See* 28 U.S.C. § 1915(a)."

Frivolousness is not a condition set forth in 28 U.S.C. § 1915(a). The Ninth Circuit further indicated that if Petitioner desired to proceed on appeal, he was required to pay docketing and filing fees, and respond to an order to show cause – both of these being actions he would not have need performed had he been permitted to proceed on appeal *in forma pauperis* without further authorization. Indigent, Petitioner managed to acquire funds to pay the fees, and filed his response. App-8, Appellant's Response to Order to Show Cause, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Nov. 18). Upon reviewing the response's content and included reasoning, the Ninth Circuit discharged its order to show cause and set a briefing schedule (App-9, Order of the United States Court of Appeals for the Ninth Circuit Discharging Order to Show Cause and Setting Briefing Schedule, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2016 Jan. 05)); in so doing, the Ninth Circuit appeared to have tacitly acknowledged that the appeal was not frivolous and at least potentially meritorious, and that district court denial of a "good faith" certification was in error.)

28 U.S.C. § 1915(a)(3) states "(a)n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." "Good faith is demonstrated when a party seeks appellate review of any issue not frivolous." *Howard v. King*, 707 F.2d 215, 220 (5th. Cir. 1983). Petitioner's appeal was permitted to proceed in the Ninth Circuit after the appellate court's review of the content and reasoning of his response to the appellate court's order to show cause.

2. Amendment of the Federal Rules of Appellate Procedure; Fed. R. App. P. 24, last amended in 2002, clearly retains the written reasoning requirement of Fed. R. App. P. 24(a)(3)(A).

Pursuant to its statutory authority provided in U.S.C. 28 § 2072, this Court prescribed the Federal Rules of Appellate Procedure. See Fed. R. App. P. Authority for Promulgation of Rules, which commences:

> **AUTHORITY FOR PROMULGATION OF RULES**
> **TITLE 28, UNITED STATES CODE**
> **§ 2072. Rules of procedure and evidence; power to prescribe**
> (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
> (b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

"All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect" is a so-called "abrogation clause". Federal Rules of Appellate Procedure "govern procedure in the United States courts of appeals." Fed. R. App. P. 1(a)(1). "The federal rules of practice and procedure govern litigation in the federal courts." United States Courts website (maintained by the Administrative Office of the U.S. Courts

on behalf of the Federal Judiciary), Rules & Policies http://www.uscourts.gov/rules-policies. Federal Rules of Appellate Procedure are prescribed by, and were adopted by order of, the U.S. Supreme Court:

> "The Supreme Court prescribes Federal Rules of Appellate Procedure pursuant to section 2072 of Title 28, United States Code, as enacted by Title IV "Rules Enabling Act" of Pub. L. 100–702 (approved Nov. 19, 1988, 102 Stat. 4648), effective December 1, 1988, and section 2075 of Title 28...
>
> Prior to enactment of Pub. L. 100–702, the Supreme Court promulgated Federal Rules of Appellate Procedure pursuant to section 3772 of Title 18 and sections 2072 and 2075 of Title 28 of the United States Code. Pursuant to this authority the Rules of Appellate Procedure were adopted by order of the Court on December 4, 1967, transmitted to Congress by the Chief Justice on January 15, 1968, and became effective on July 1, 1968 (389 U.S. 1063; Cong. Rec., vol. 114, pt. 1, p. 113, Exec. Comm. 1361; H. Doc. 204, 90th Cong.). Effective December 1, 1988, section 3772 of Title 18 and former section 2072 of Title 28 were repealed and supplanted by new sections 2072 and 2074 of Title 28, see first paragraph of Historical Note above." Fed. R. App. P. Historical Note, p. VII.

The Historical and Revision Notes to 28 U.S.C. § 1915 indicate that 28 U.S.C. § 1915(a) was last substantively modified by the 1948 Act (Section 832 of title 28, U.S.C., 1940 ed., was completely rewritten, and constitutes subsections (a) and (b).). The Federal Rules of Appellate Procedure were however adopted by order of this Court on December 4, 1967, and became effective July 1, 1968; at which point as per U.S.C 28 § 2072(b) all laws in conflict with such rules shall be of no further force or effect.

The Fifth Circuit ruling in *Jackson v. Stinnett*, 102 F.3d 132 (5th Cir. 1996), presents an instructive analysis concerning amendment of the Federal Rules of Appellate Procedure, the "abrogation clause" of U.S.C. 28 § 2072(b), and the superseding of Statutes enacted prior to the rules that are inconsistent with them:

> "The Prison Litigation Reform Act, P.L. No. 104-134, 110 Stat. 1321 (1996) ("PLRA" or "Act") amended 28 U.S.C. § 1915 to require new filing procedures and fees for prisoners proceeding i.f.p....

It has long been settled that Congress has the authority to regulate matters of practice and procedure in the federal courts. Sibbach v. Wilson & Co., 312 U.S. 1, 9-10, 61 S. Ct. 422, 424, 85 L. Ed. 479 (1941); Wayman v. Southard, 23 U.S. (10 Wheat) 1, 21, 6 L. Ed. 253 (1825). Congress delegated some of this power in 1934 by passing the Rules Enabling Act, which gave the Supreme Court the power to promulgate rules of practice and procedure for United States courts. 28 U.S.C. §§ 2071-72. Despite this delegation of authority, Congress maintains an integral, albeit passive, role in implementing any rules drafted by the Court. For example, all such rules are subject to review by Congress; they take effect only after the Supreme Court has presented them to Congress and after Congress has had seven months to review proposed rules or changes. Id. § 2074. Congress uses the review period to "make sure that the action under the delegation squares with the Congressional purpose." Sibbach, 312 U.S. at 15, 61 S. Ct. at 427. Although Congress has authorized the Court to exercise some legislative authority to regulate the courts, Congress at all times maintains the power to repeal, amend, or supersede its delegation of authority or the rules of procedure themselves. United States v. Mitchell, 397 F. Supp. 166, 170 (D.D.C. 1974), aff'd, 559 F.2d 31 (D.C. Cir. 1976), cert. denied, 431 U.S. 933, 97 S. Ct. 2641, 53 L. Ed. 2d 250 (1977); United States v. Isaacs, 351 F. Supp. 1323, 1328 (N.D. Ill. 1972). Therefore Congress may at any time amend or abridge by statute the Federal Rules of Civil Procedure, Rules of Appellate Procedure, Rules of Evidence, or other federal procedural rules promulgated under the Rules Enabling Act. Hawkins v. United States, 358 U.S. 74, 78, 79 S. Ct. 136, 138, 3 L. Ed. 2d 125 (1958); Mitchell, 397 F. Supp. at 170.

There are two limits to Congress's power to amend the Federal Rules of Appellate Procedure. First, in granting to the Supreme Court the power to make federal procedural rules, the Rules Enabling Act stipulates that " [a]ll laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." 28 U.S.C. § 2072(b). On its face, this so-called "abrogation clause" seems to invalidate all federal statutes "in conflict" with court rules. The abrogation clause, however, has never been read so broadly. By qualifying the clause to say that offending statutes will not have further effect after the rule takes effect, the abrogation provision requires that the offending statute have some effect before the rule's enacting date.

Consistent with this observation, courts and commentators generally consider the abrogation clause to trump only statutes passed before the effective date of the rule in question. Penfield Co. v. Securities & Exch. Comm'n, 330 U.S. 585, 589 n. 5, 67 S. Ct. 918, 921 n. 5, 91 L. Ed. 1117 (1947); see also 4 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure: Civil § 1030 at 125 & n. 2 (2d ed. 1987) ("Statutes enacted prior to the rules that are inconsistent with them are superseded."); Note, The Conflict Between Rule 68 and the Civil Rights Attorneys' Fees Statute: Reinterpreting the Rules Enabling Act, 98 Harv. L. Rev. 828, 835 (1985) (" [T]he abrogation provision has been understood to apply to inconsistent statutes enacted before the rules.")." *Jackson v. Stinnett*, 102 F.3d 132 (5th Cir. 1996)

In 1996, the PLRA modified 28 U.S.C § 1915. *Jackson v. Stinnett* discussed that PLRA amendment of 28 U.S.C § 1915; the abrogation clause of U.S.C. 28 § 2072(b); amendment of the Federal Rules of Appellate Procedure; and the superseding of Statutes enacted prior to the rules that are inconsistent with them. Subsequently in 1997, the Fifth Circuit issued *Baugh*'s explicit holding that a district court must set forth in writing the reasons for its certification that an appeal was not taken in good faith.

Then in due course, the Historical Notes to Fed. R. App. P. 24 indicate it was last amended in 2002. That amended version – coming into effect only after a mandated period of time for Congress to review proposed rules or changes – clearly retains the written reasoning requirement of Fed. R. App. P. 24(a)(3)(A).

Further, in all versions (2015 January 01 through 2017 July 01) of Federal Rules of Appellate Procedure, Ninth Circuit Rules, and Circuit Advisory Committee Notes available to Petitioner from the Ninth Circuit and The United States Courts website; Fed. R. App. P. 24(a) Leave to Proceed in Forma Pauperis sections 24(a)(3) and 24(a)(3)(A) provide:

> "(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action...may proceed on appeal in forma pauperis without further authorization, unless:
>
> (A) the district court – before or after the notice of appeal is filed – certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis **and states in writing its reasons for the certification or finding**;..." (**emphasis** added).

Ninth Circuit Rules in effect on 2015 July 20 (the date of the district court order revoking Petitioner's district court *in forma pauperis* status, see App-5, Order of the United States District Court for the Northern District of California Revoking Plaintiff's

In Forma Pauperis Status, *N. Charles Podaras v. City of Menlo Park; et al.*, No. CV 14-3152 SI, (2015 Jul. 20)), contain no Circuit Rule 24, indicating that the Ninth Circuit had not found cause to "...make and amend rules governing its practice" (see Fed. R. App. P. 47) concerning the contents or practice of Fed. R. App. P. 24. Nor were there any comments from the Ninth Circuit Advisory Committee. Thus the Ninth Circuit and its courts would be bound by the terms of Fed. R. App. P. 24, Proceeding in Forma Pauperis, unchanged by local Rule. Hence, a certification by the district court that an appeal was not taken in good faith, also being bound by those terms, must "state[ ] in writing its reasons for the certification..." Fed. R. App. P. 24(a)(3)(A).

C. This case is an ideal vehicle to resolve this issue of national importance.

II. The issue of the Ninth Circuit failing to examine facts in the record cited to from within that court's informal form brief is an issue of national importance on which the Ninth Circuit's treatment of Petitioner indicates a fundamental unfairness, with significant possibility of recurrence given the number of pro se parties seeking relief in the United States Courts of Appeals and specifically in the Ninth Circuit.

A. The Ninth Circuit panel overlooked material facts referenced or cited to by Petitioner, a pro se appellant using the court's informal brief form.

Ninth Circuit Rule 28-1(c):

> "Appellants proceeding without assistance of counsel may file the form brief provided by the Clerk in lieu of the brief described in the preceding paragraph. If an appellant uses the informal brief form, the optional reply brief need not comply with the technical requirements of FRAP 28(c) or 32(a)."

Ninth Circuit publications provide guidance for use of the question-and-answer format informal brief form, i.e.: "Answer all of the questions on the form as clearly and accurately as possible" (*After Opening a Case – Pro Se Appellants*, including the informal brief form and located at http://cdn.ca9.uscourts.gov/datastore/uploads/file_an_appeal/case opening - pro se appls June 2017.pdf); "If a pro se litigant elects to file a form brief pursuant to Ninth Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32" (*Information Regarding Judgement and Post-Judgement Proceeding*, App-1, Memorandum Disposition of the United States Court of Appeals for the Ninth Circuit Affirming District Court's Decision, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2017 Oct. 03) at 80-2).

Using the informal brief form, Petitioner followed form format, the Ninth Circuit's published rules and guidelines, and Clerk guidance, in presenting his contentions and reasoning by directly answering the form's questions, and incorporating citations. See generally 9th Cir. Dkt. 19, questions 2, 3, 5-7. He cited to facts, locations of facts, and parts of the record on which he relies, providing directory of relevant documents docketed in the district court and the Ninth Circuit; adopting facts from the record by reference to them, in the interest of judicial economy and for the Ninth Circuit's ease of reference and convenience.

Mindful of Ninth Circuit Rule 28-1(b) ("Parties must not append or incorporate by reference briefs submitted to the district court or agency or this Court in a prior appeal, or refer this Court to such briefs for the arguments on the merits of the appeal"),

Petitioner did not append or incorporate by reference briefs submitted to the district court or agency or the Ninth Circuit in a prior appeal, or refer the Ninth Circuit to such briefs for the arguments on the merits of the appeal. Petitioner did not incorporate arguments by reference, but cited to and referenced **facts**, referring the Ninth Circuit to non-brief documents for points of fact.

The panel decision however states "We do not consider arguments incorporated by reference into the briefs." App-1, Memorandum Disposition of the United States Court of Appeals for the Ninth Circuit Affirming District Court's Decision, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2017 Oct. 03) at 80-1, p. 3. The panel decision overlooked material points of fact. Given the panel stance, considered together with the existence of multiple panel conclusions which logically rely on the absence of true facts which do exist in the record – i.e., panel reliance on examination of an incomplete set of facts; it is reasonable to conclude that the panel has overlooked material facts. This indicated a need for the Ninth Circuit to re-examine the record. Failure to consider material facts appears to be rooted in incongruity between the informal brief form question-and-answer structure, and citation from therein to points of fact in the record.

The panel decision essentially allows that following the Ninth Circuit's form, instructions and rules results in cited and referenced facts being disregarded, causing an appeal to be denied and the *pro se* appellant to lose the case. The Court needs to review this situation – based in the Ninth Circuit's current question-and-answer-style informal brief form and instructions for its use – which can be prejudicial to *pro se* appellants. There is conflict with the Ninth Circuit's own *pro se* informal form brief framework and Ninth Circuit Rule 28-1(c), potentially affecting large numbers of persons in a significant

class – *pro se* parties seeking relief in the United States Ninth Circuit – and impacting their fundamental legal or constitutional rights. This conflict issue in the current proceeding presents a question of significant national importance.

B. This case is an ideal vehicle to resolve this issue of national importance.

III. Extensive factual errors in the district court 2015 April 30 order's fact statement and analysis – including numerous instances of complete inversions of true facts, as well as multiple instances of errors resulting from episodes of document conflation committed by the district court – acted to remove the true-fact bases for several of Petitioner's key claims in his district court 42 U.S.C § 1983 civil rights action.

Errors committed by an appellate court or district court are generally not primary issues for a petition for certiorari to this Court. However in this case it is worthy of mention that extensive errors committed by the district court, including *numerous complete inversions of true facts* and *multiple instances of errors resulting from conflation of documents;* and lack of correction by the district court when informed – via a plaintiff motion to amend or alter the judgement and subsequent Reply papers – of said errors; are a relevant factor. See App-14, Plaintiff's Notice of Motion and Motion to Alter or Amend the Judgement and/or for Relief from Judgement; Declaration of Plaintiff; and [Proposed] Order, *N. Charles Podaras v. City of Menlo Park; et al.*, No. CV 14-3152 SI, (2015 May 28); and also see App-15, Plaintiff's Replies to Defendants' Five Oppositions to Plaintiff's Motion to Alter or Amend the Judgement and/or for Relief from Judgement, *N. Charles Podaras v. City of Menlo Park; et al.*, No. CV 14-3152 SI, (2015 Jun. 18).

A. The uncorrected district court errors propagated forward into the Ninth Circuit appeal, where they remained uncorrected due to the Ninth Circuit panel's apparent failure to examine facts cited to by Petitioner.

Errors propagated uncorrected, from the district court opinion's fact statement and analysis, into the appellate court. There, the appellate panel did not acknowledge information presenting correction, or correct the errors, and even continued to reiterate district court errors. *Supra.* PETITION FOR WRIT OF CERTIORARI, pp. 3–4. *Supra.* II. A..

B. The Ninth Circuit performed its analyses based on an incomplete set of facts, and as well on uncorrected false facts that trace back to the district court order granting defendants' motions to dismiss.

In light of the district court's extensive factual errors; in order to perform an accurate review of the district court 2015 April 30 order's fact statement, analysis, and conclusions, it was important for the Ninth Circuit to consider true facts in the record to which Petitioner had cited from within his opening brief. Instead, the Ninth Circuit performed its analysis using not only an incomplete set of facts, but also in part on false facts created by the district court itself. Triers of fact must obtain a full and fair understanding of the facts before making a determination. The panel ruling did not reflect a full and fair understanding of the facts: panel findings are misleading, and in multiple instances unsupported by facts and the record. *Supra.* PETITION FOR WRIT OF CERTIORARI, pp. 3–4. *Supra.* II. A..

Petitioner provided information to assist the district court in correcting errors – present in its opinion's fact statement and analysis – which had acted to remove the true-

fact bases for several of Petitioner's key claims in his district court 42 U.S.C § 1983 civil rights action (see App-14 and App-15 as above). The district court factual error also served to corrupt and remove the correct chronology of true facts which supported the application of the Ninth Circuit's on-point teaching in *Estate of Amaro v. City of Oakland*, 653 F.3d 808 (9th Cir. 2011).

Further, in his subsequent response to the Ninth Circuit's order to show cause why the district court's judgement should not be summarily affirmed, Petitioner also provided thorough information regarding district court factual error, as well as opposing party late-stage misrepresentations which acted to mislead the district court. See App-8, Appellant's Response to Order to Show Cause, *Charles Podaras v. City of Menlo Park; et al.*, No. 15-16437, (2015 Nov. 18). Upon considering the content and reasoning contained in the Response to Order to Show Cause, the appellate court discharged its order to show cause and set the briefing schedule.

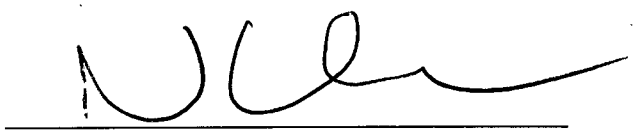
***

For the reasons set forth above, Petitioner respectfully requests that this Court reverse the judgement of the appeals court and that the matter be remanded to the district court for further proceedings; or alternatively that this Court summarily reverse the decisions of the Ninth Circuit and the district court. Petitioner respectfully prays that a writ of certiorari issue to review the judgements below.

CONCLUSION

For the reasons set forth above, this Court should grant the petition for certiorari.

Respectfully submitted,



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